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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,019	10/31/2003	Peter Schlegel	487.1086	2142
23280	7590	10/04/2005		
DAVIDSON, DAVIDSON & KAPPEL, LLC 485 SEVENTH AVENUE, 14TH FLOOR NEW YORK, NY 10018			EXAMINER JACKSON, ANDRE L	
			ART UNIT	PAPER NUMBER
			3677	
DATE MAILED: 10/04/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/699,019

Applicant(s)

SCHLEGEL, PETER

Examiner

Andre' L. Jackson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 14-23, 25-28 and 31-33 is/are rejected.
- 7) ☒ Claim(s) 9-13, 24, 29 and 30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-8, 14-23, 25-28 and 31-33 are rejected under 35 U.S.C. 102(e) as being anticipated by USPN 6,618,904 to Nagy. Nagy discloses a vehicle hinge mechanism comprising;

a vehicle body (34), a flap (38), a four-joint flap hinge comprising a first link (18) and a second link (16), the first link and the second link each being pivotably attached to the vehicle body and to the flap, a gas-filled spring (56) assigned to the vehicle body and to the flap, and a first spring (44) arranged on the vehicle body, the first spring being in a tensioned position when the flap is closed and urging the flap into an opening direction, wherein one of the first link and the second link comprises a tensioning device or portion (22) coming into contact with the first spring in a second opening phase of the flap and tensioning the first spring back into the tensioned position, and a locking device (52, 53) for retaining the tensioned first spring.

As to claims 3-8, 25 and 26, the first spring of Nagy is a torsion spring having leaf legs (50,48) and a convolution part (46) projecting in a direction of the second link for urging the flap in the opening direction. The tensioning device or pivot pin includes a coupling region (Fig. 5) defined as a projection for tensioning the first spring when the second link is pivoted. The

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locking devices are retainers, which holds the first spring legs in a locked position when the flap is lowered or raised (Fig. 5).

As to claims 16-19 and 23, the hinge mechanism of Nagy further includes a bracket section (12) assigned to the first spring in contact with the first and second links in a partially open and closed position respectively. As seen in Fig. 1, at rest before an initial opening movement the first spring is not in contact with the first link, second link or flap. The stored spring energy in the first spring merges with the opening movement provided by the gas-filled spring (Fig. 3).

Allowable Subject Matter

Claims 9-13, 24, 29 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Applicant's Arguments

Applicant's arguments filed in the Amendment of July 13, 2005 have been fully considered but they are not persuasive. Applicant arguments pertain to the rejection of claims 1-8, 14-23, 25-28, and 31-33 as being non-anticipatory in view of Nagy. Applicant states that Nagy does not disclose or suggest a device for tensioning a first spring during a second opening phase of a flap as that feature is recited in each of independent claims 1, 20, 27, and 31. Further, applicant states the Examiner has cited the pivot pin 22 as the tensioning device without asserting that the Nagy pivot pin 22 acts to tension the coil spring 44 during "a second opening

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phase of the flap". or during any opening phase of the flap for that matter. On the contrary, Nagy teaches that spring 44 spring biases the hinge toward an opening direction over the entire course of the opening movement. Therefore, the feature of a tensioning device for tensioning the first spring in a second opening phase of the flap, cannot be found in Nagy.

In response to applicant's argument above, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed (function) does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham, 2 USPQ2d 1647 (1987)*.

Therefore, since Nagy satisfies the structural elements in applicant's claims as broadly interpreted by the Examiner, the phrase "for tensioning the first spring in a second opening phase of the flap" does not constitute a positive limitation in any patentable sense and thus not given patentable significance as presented in applicant's claims listed above.

Therefore, the rejection of claims 1-8, 14-23, 25-28 and 31-33 over Nagy is maintained and claims 9-13, 24, 29 and 30 remain objected to.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre' L. Jackson whose telephone number is (571) 272-7067. The examiner can normally be reached on Mon. - Fri. (9:30 am - 6 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Andre' L. Jackson
Patent Examiner
AU 3677

ALJ


ROBERT J. SANDY
PRIMARY EXAMINER